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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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10 THAT ONE VIDEO
11 ENTERTAINMENT, LLC, a
California limited liability company,

12 Plaintiff,

13 v.

14 KOIL CONTENT CREATION PTY
15 LTD., an Australian proprietary
16 limited company doing business as
NOPIXEL; MITCHELL CLOUT, an
individual; and DOES 1-25,
inclusive,

17 Defendants.
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Case No.: 2:23-cv-02687-SVW-JC

PROTECTIVE ORDER

[CHANGES MADE BY COURT TO
PARAGRAPHS 4, 9, AND 10(C)]

20 1. PURPOSES AND LIMITATIONS
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22 Discovery in this action is likely to involve production of confidential,
23 proprietary, or private information for which special protection from public
24 disclosure and from use for any purpose other than prosecuting this litigation may
25 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
26 enter the following Stipulated Protective Order. The parties acknowledge that this
27 Order does not confer blanket protections on all disclosures or responses to
28 discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles. The parties further acknowledge, as set forth in
3 Section 13(c), below, that this Stipulated Protective Order does not entitle them to
4 file confidential information under seal; Civil Local Rule 79-5 sets forth the
5 procedures that must be followed and the standards that will be applied when a party
6 seeks permission from the court to file material under seal.

7 2. GOOD CAUSE STATEMENT

8 This action is likely to involve commercial, financial, proprietary, creative,
9 and developmental content, and other confidential and/or proprietary information for
10 which special protection from public disclosure and from use for any purpose other
11 than prosecution of this action is warranted. Such confidential and proprietary
12 materials and information consist of, among other things, confidential business or
13 financial information, information regarding confidential business practices, or other
14 confidential research, development, or commercial information (including
15 information implicating rights of third parties), information otherwise generally
16 unavailable to the public, or which may be privileged or otherwise protected from
17 disclosure under state or federal statutes, court rules, case decisions, or common
18 law. Accordingly, to expedite the flow of information, to facilitate the prompt
19 resolution of disputes over confidentiality of discovery materials, to adequately
20 protect information the parties are entitled to keep confidential, to ensure that the
21 parties are permitted reasonable necessary uses of such material in preparation for
22 and in the conduct of trial, to address their handling at the end of the litigation, and
23 serve the ends of justice, a protective order for such information is justified in this
24 matter. It is the intent of the parties that information will not be designated as
25 confidential for tactical reasons and that nothing be so designated without a good
26 faith belief that it has been maintained in a confidential, non-public manner, and
27 there is good cause why it should not be part of the public record of this case.
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3. DEFINITIONS

3.1 Action: *That One Video Entertainment, LLC v. Koil Content Creation Pty Ltd., et al*, Case No. 2:23-cv-02687-SVW-JC.

3.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

3.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

3.4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “CONFIDENTIAL” Information or Items, the disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

3.5 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

3.6 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

3.7 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

3.8 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

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1 3.9 House Counsel: attorneys who are employees of a party to this Action.
 2 House Counsel does not include Outside Counsel of Record or any other outside
 3 counsel.

4 3.10 Non-Party: any natural person, partnership, corporation, association, or
 5 other legal entity not named as a Party to this action.

6 3.11 Outside Counsel of Record: attorneys who are not employees of a party
 7 to this Action but are retained to represent or advise a party to this Action and have
 8 appeared in this Action on behalf of that party or are affiliated with a law firm which
 9 has appeared on behalf of that party, and includes support staff.

10 3.12 Party: any party to this Action, including all of its officers, directors,
 11 employees, consultants, retained experts, and Outside Counsel of Record (and their
 12 support staffs).

13 3.13 Producing Party: a Party or Non-Party that produces Disclosure or
 14 Discovery Material in this Action.

15 3.14 Professional Vendors: persons or entities that provide litigation
 16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
 17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 18 and their employees and subcontractors.

19 3.15 Protected Material: any Disclosure or Discovery Material that is
 20 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 21 ATTORNEYS’ EYES ONLY.”

22 3.16 Receiving Party: a Party that receives Disclosure or Discovery
 23 Material from a Producing Party.

24 4. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
 26 Protected Material (as defined above), but also (1) any information copied or
 27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 28 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material other
2 than during a court hearing or at trial.

3 Any use of Protected Material during a court hearing or at trial shall be
4 governed by the orders of the presiding judge. This Order does not govern the use
5 of Protected Material during a court hearing or at trial.

6 5. DURATION

7 Even after final disposition of this litigation, the confidentiality obligations
8 imposed by this Order shall remain in effect until a Designating Party agrees
9 otherwise in writing or a court order otherwise directs. Final disposition shall be
10 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
11 with or without prejudice; and (2) final judgment herein after the completion and
12 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
13 including the time limits for filing any motions or applications for extension of time
14 pursuant to applicable law.

15 6. DESIGNATING PROTECTED MATERIAL

16 6.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection under
18 this Order must take care to limit any such designation to specific material that
19 qualifies under the appropriate standards. The Designating Party must designate for
20 protection only those parts of material, documents, items, or oral or written
21 communications that qualify so that other portions of the material, documents,
22 items, or communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations
25 that are shown to be clearly unjustified or that have been made for an improper
26 purpose (e.g., to unnecessarily encumber the case development process or to impose
27 unnecessary expenses and burdens on other parties) may expose the Designating
28 Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it
 2 designated for protection do not qualify for protection, that Designating Party must
 3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 6.2 Manner and Timing of Designations. Except as otherwise provided in
 5 this Order (see, e.g., second paragraph of section 6.2(a) below), or as otherwise
 6 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
 7 under this Order must be clearly so designated before the material is disclosed or
 8 produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
 11 documents, but excluding transcripts of depositions or other pretrial or trial
 12 proceedings), that the Producing Party affix at a minimum, the legend
 13 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 14 ONLY" to each page that contains protected material. If only a portion or portions of
 15 the material on a page qualifies for protection, the Producing Party also must clearly
 16 identify the protected portion(s) (e.g., by making appropriate markings in the
 17 margins).

18 A Party or Non-Party that makes original documents available for inspection
 19 need not designate them for protection until after the inspecting Party has indicated
 20 which documents it would like copied and produced. During the inspection and
 21 before the designation, all of the material made available for inspection shall be
 22 deemed "CONFIDENTIAL" (or "HIGHLY CONFIDENTIAL – ATTORNEYS'
 23 EYES ONLY" where needed). After the inspecting Party has identified the
 24 documents it wants copied and produced, the Producing Party must determine which
 25 documents, or portions thereof, qualify for protection under this Order. Then, before
 26 producing the specified documents, the Producing Party must affix the
 27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
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ONLY” legend to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony, or by writing within seven (7) days of the deposition.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

7.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

7.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

8. ACCESS TO AND USE OF PROTECTED MATERIAL

8.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section 14 below.

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may not be reviewed by the Receiving Party, and may be reviewed only by:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) House Counsel of the Receiving Party;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) private court reporters and their staff to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the

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1 subpoena or order is subject to this Protective Order. Such notification shall include
2 a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to
4 be pursued by the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with
6 the subpoena or court order shall not produce any information designated in this
7 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY” before a determination by the court from which the subpoena or order
9 issued, unless the Party has obtained the Designating Party’s permission or unless
10 otherwise required by the law or court order. The Designating Party shall bear the
11 burden and expense of seeking protection in that court of its confidential material
12 and nothing in these provisions should be construed as authorizing or encouraging a
13 Receiving Party in this Action to disobey a lawful directive from another court.

14 10. NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
15 PRODUCED IN THIS LITIGATION

16 (a) The terms of this Order are applicable to information produced by a
17 Non-Party in this Action and designated as “CONFIDENTIAL” Or “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by
19 Non-Parties in connection with this litigation is protected by the remedies and relief
20 provided by this Order. Nothing in these provisions should be construed as
21 prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-
27 Party that some or all of the information requested is subject to a confidentiality
28 agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court unless otherwise required by the law or court order. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
2 may be established in an e-discovery order that provides for production without
3 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
4 as the parties reach an agreement on the effect of disclosure of a communication or
5 information covered by the attorney-client privilege or work product protection, the
6 parties may incorporate their agreement in the stipulated protective order submitted
7 to the court.

8 13. MISCELLANEOUS

9 (a) Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

11 (b) Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 (c) Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
18 only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue. If a Party's request to file Protected Material
20 under seal is denied by the court, then the Receiving Party may file the information
21 in the public record unless otherwise instructed by the court.

22 14. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in Section 5, within 60
24 days of a written request by the Designating Party, each Receiving Party must return
25 all Protected Material to the Producing Party or destroy such material. As used in
26 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
27 summaries, and any other format reproducing or capturing any of the Protected
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1 Material. Whether the Protected Material is returned or destroyed, the Receiving
2 Party must submit a written certification to the Producing Party (and, if not the same
3 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
4 (by category, where appropriate) all the Protected Material that was returned or
5 destroyed and (2) affirms that the Receiving Party has not retained any copies,
6 abstracts, compilations, summaries or any other format reproducing or capturing any
7 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
8 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
9 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
10 reports, attorney work product, and consultant and expert work product, even if such
11 materials contain Protected Material. Any such archival copies that contain or
12 constitute Protected Material remain subject to this Protective Order as set forth in
13 Section 5.

14 15. Any violation of this order may be punished by any and all appropriate
15 measures including, without limitation, contempt proceedings and/or monetary
16 sanctions.

17 IT IS SO ORDERED AS MODIFIED.

18 DATED: April 19, 2024

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20 /s/
21 Honorable Jacqueline Chooljian
22 United States Magistrate Judge
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Protective Order that was issued by
 the United States District Court for the Central District of California on April 19, 2024
 in the case of *That One Video Entertainment, LLC v. Koil Content Creation Pty Ltd.,
 et al*, Case No. 2:23-cv-02687-SVW-JC. I agree to comply with and to be bound by
 all the terms of this Protective Order and I understand and acknowledge that failure
 to so comply could expose me to sanctions and punishment in the nature of contempt.
 I solemnly promise that I will not disclose in any manner any information or item that
 is subject to this Protective Order to any person or entity except in strict compliance
 with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Protective Order, even if such enforcement proceedings occur after termination of this
 action. I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____